

**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition For Declaratory Ruling: Lawfulness)	CC Docket No. 01-92
Of Incumbent Local Exchange Carrier)	DA 02-2436
Wireless Termination Tariffs)	
)	
Interconnection Between Local Exchange)	CC Docket No. 95-185
Carriers and Commercial Mobile Radio)	
Service Providers)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications)	
Act of 1996)	

Comments Of:

Fred Williamson and Associates, Inc. ("FW&A")

On behalf of:

**Chouteau Telephone Company, an Oklahoma ILEC
H&B Telephone Communications, Inc., a Kansas ILEC
Moundridge Telephone Company, Inc., a Kansas ILEC
Pine Telephone Company, Inc., an Oklahoma ILEC
Pioneer Telephone Association, Inc., a Kansas ILEC
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC
Twin Valley Telephone, Inc., a Kansas ILEC
(Collectively, "ILECs")**

COMMENTS

In the Petition on page 1, the Petitioners have requested that the Commission: "...enter a declaratory ruling reaffirming that wireless termination tariffs are not proper mechanism for establishing reciprocal compensation arrangements..." Apparently, the Petitioners are requesting that the Commission find that all wireless tariffs are unlawful because on page 2 of the Petition, the Petitioners ask the Commission: "...to enter an order directing ILECs to withdraw any wireless termination tariffs in existence today, or, alternatively, to declare such tariffs unlawful, void and of no effect."

FW&A urges the Commission to approach this request with caution. Wireless termination tariffs (RCC or Radio Common Carrier tariffs) currently exist that are mutually agreed to and used by LECs (large and small) and CMRS providers. These tariffs are neither unlawful nor at odds with the Act or Commission rules because they represent a mutually agreed upon compensation arrangement, which is used in lieu of the more costly process of negotiating an interconnection agreement. The Petitioners request, because it is overly broad, would incorrectly and inappropriately void these mutually agreed to compensation arrangements. If the Commission does grant the Petitioners request, it must find a way to narrowly act so as to not disturb tariffs that are lawful and agreed to by the parties, in lieu of interconnection agreements.

Beyond the tariffing issue that is the substance of the Petition, there are a number of assertions in the Petition that require comment because they are incorrect. These incorrect claims and assertions are dealt with in the following sections of FW&A's Comments.

**Inappropriate Use Of The Rural LEC's Networks By The Petitioners And Other
CMRS Providers To Terminate CMRS Traffic For Free**

In the Petition, the CMRS Petitioners assert that: "Carriers that interconnect indirectly with each other often do so without an interconnection contract and pursuant to bill-and-keep, at least for mobile-to-land traffic."¹ The Petitioners further assert on page 7 of their Petition that: "Some small ILECs do not like the *status quo*, whereby *de minimus* amounts of intra-MTA traffic with CMRS providers are exchanged without a formal interconnection agreement and typically on a bill-and-keep basis."

These assertions are incorrect, disingenuous and misleading. The petitioners fail to mention in their Petition that they and other CMRS providers took inappropriate advantage of their interconnection agreement with the tandem owner (usually the large RBOC) to deliver traffic via the tandem owner to the small rural LECs without letting the rural LECs know that traffic would be delivered for termination and without offering to pay for the termination of that traffic. As the Petitioners mention in their Petition in the first sentence of footnote 8, the tandem owner sends the CMRS traffic over a "large" trunk group to the small LEC. However, this CMRS traffic is mixed with other traffic originating from the tandem owner, other LECs and CLECs and other CMRS providers. The rural LECs could not identify, at their end office switch, the originating CMRS provider that was indirectly terminating its traffic on the rural LEC network until recently when some of the tandem owners began providing those records to the rural LECs. Once the rural LECs had these records, they began contacting the CMRS providers requesting that the CMRS providers pay for the use of the rural LEC transport and terminating facilities used by the CMRS provider. The small rural LECs never agreed to bill-and-

keep on a “*status quo*” basis as inferred by the Petitioners. It was knowingly imposed on them by the CMRS providers. Through this unilateral, indirect, connect arrangement with the tandem owner, the CMRS providers simply have a free ride (using the facilities of the small LEC for free) to benefit their bottom line at the expense of the LEC and their landline customers who are now inappropriately subsidizing the CMRS providers by paying for these facility costs. The small rural LECs were not consulted about, and do not agree with this present unilateral CMRS mode of doing business.

On page 7 of its Petition, the Petitioners assert: “An ILEC, with a lucrative wireless termination tariff in effect that contains one-sided prices, terms and conditions, has no incentive to negotiate a reasonable interconnection agreement with a CMRS provider.” In view of the one-sided, unilateral indirect termination of traffic to the rural LECs over a period of years, with no notice to the rural LECs that they were terminating traffic, but with the knowledge that the rural LECs could not identify them or their traffic, this Petitioner statement is completely disingenuous. For years, it was the Petitioners who inappropriately imposed bill-and-keep and who because of their lucrative and inappropriate use of the rural LEC network for free had no incentive to negotiate a reasonable agreement. The CMRS providers inappropriately and knowingly used the rural LEC facilities for free without even consulting the rural LECs and only discussed payment for the use of the rural LEC facilities (usage which is not “*de minimus*” to the rural LEC), when the rural LECs had the ability to identify and bill the CMRS providers for the facilities used.

¹ Petition filed September 6, 2002 in Docket Nos. 01-92, 95-185 and 96-98 (Petition), page 3.

Rulings By State Commissions

On page 4 of its Petition, the Petitioners claim that the Oklahoma Corporation Commission recently ruled that all intraMTA LEC-CMRS traffic – both mobile-to-land and land-to-mobile – should be exchanged subject to bill-and-keep. Again, this claim is misleading. Oklahoma did not adopt bill-and-keep as a matter of principal or policy but because the Arbitrator did not approve of the TELRIC studies submitted by the rural LECs, was concerned that the balance of traffic studies were inaccurate and because the rural LECs filed for a common interconnection rate. The Oklahoma Commission has, in direct opposition to the Petitioners claims, allowed the rural LECs to file individually for interconnection rates based on their own balance of traffic and TELRIC costs.

Land to Mobile Traffic Routing

On page 4, footnote 8 of their Petition, the Petitioners state that they believe; “...that an ILEC’s use of the access regime for intraMTA calls with CMRS carriers is flatly inconsistent with the Commission’s rules that such calls should be governed by reciprocal compensation, not access charges.” The Petitioners are wrong. FW&A will, not restate the facts here, but in brief, when an interconnection agreement is sought by the rural LEC, CMRS providers attempt to force the rural LECs who provide no service beyond their local exchange boundary to treat IXC presubscribed traffic that is originated and terminated within an MTA as if it were rural LEC local traffic. This treatment is at odds with the Act and FCC rules, which (a) Require that this traffic be handed off to a customer’s presubscribed carrier and (b) Exempts this IXC traffic from intraMTA reciprocal compensation requirements because the IXC, not the rural LEC is the service

provider. The specific reasons why this call processing and routing are correct and in compliance with Commission and State rules are contained in the following FW&A filings:

- November 30, 2001 Comments filed regarding the Sprint PCS and AT&T Petition on CMRS Access Charge Issues, WT Docket No. 01-316, DA 01-2618.
- August 8, 2002 Comments and August 19, 2002 Reply Comments filed regarding the Sprint Petition on Rating and Routing, CC Docket No, 01-92, DA 02-1740.
- September 12, 2002 ExParte.

Respectfully submitted on behalf of the ILECs by,

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